IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SECOND DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 22175 of 2004

Between:

Hindustan Petroleum Corporation Limited, Vishaka Terminal, Malkarpuram Vishakapatnam - 530 011 Rep. by its Senior Manager -Tax Mr. R.S. Ashok Kumar.

..... PETITIONER

AND

1 Union of India, Rep. by its Secretary, Ministry of Finance, Department of Revenue, Central Secretariat, New Delhi.
2 The Commissioner of Customs and Central Excise (Appeals) CLS Building (Annexe) 2nd Floor, Nampally Station Road, Hyderabad - 500 001
3 The Commissioner of Customs and Central Excise, Vishakapatnam-I Division,Ground Floor, SVC Complex, Door No. 47-11-7, Dwaraka Nagar, Vishakapatnam - 530 016.
4 The Assistant Commissioner of Customs and Central Excise,

Vishakapatnam-I Division, Ground Floor, SVC Complex, Door No. 47-11-7, Dwaraka Nagar, Vishakapatnam - 530 016.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to a) call for the records pertaining to the Order dated August 21, 2001, passed in Stay petition No.54 of 2001 (V) ICE in appeal No. 55 of 2001 (V) CE of the Respondent

No.2 herein i.e., the Commissioner of Customs and Central Excise (Appeals), CLS Building, (Annexe), 2nd Floor, Nampally Station Road, Hyderabad - 500 001. b) Quash the said Order by the issuance of a Writ, Order or Direction, more particularly in the nature of a Writ of Certiorari or any other appropriate Writ Order or Direction, while declaring that the consequential demand notice dated November 5, 2004 issued by the 3rd Respondent i.e., the Commissioner of Customs and Central Excise Division -I, Visakhapatnam and the Execution proceedings initiated by the 4th Respondent i.e., the Assistant Commissioner of Customs and Central Excise, Division-I, Visakhapatnam, dated November 23, 2004, attaching the movable properties of petroleum products with an estimated value of Rs.2.21 crores stored in Tank No. 290 of the Petitioner's Vizag Terminal-A, are illegal, arbitrary, void and as such inoperative in law.

Counsel for the Petitioner:MR.C.R.SRIDHARAN

Counsel for the Respondents: MR.ARAJASHEKAR REDDY (SC FOR CG)

The Court at the admission stage made the following ORDER: (per BRSR,J)

Heard the learned Senior Counsel appearing on behalf of the petitioner and learned Standing Counsel appearing for Central Government and requested the matter to be taken up for disposal at the stage of admission.

Rule nisi.

The Assistant Commissioner of Central Excise, Visakhapatnam-I Division, vide order dated 19-03-2001 having confirmed the duty demand amounting to

Rs.78,33,948/-, (Rupees Seventy Eight Lakhs Thirty three thousands Nine hundred and forty eight only), demanded the payment, against which, the petitioner herein filed an appeal along with stay petition before the second respondent-Commissioner of Customs and Central Excise (Appeals), Hyderabad. The Appellate authority found that the petitioner herein did not make out any strong case for complete waiver of the pre-deposit of the amount demanded as prayed for. On the other hand, the appellate authority found the adjudicating authority has, prima facie, made out a case in favour of the revenue.

However, having regard to the facts and circumstances of the case, the appellate authority directed the petitioner to pre-deposit a sum of Rs.39,25,000/- only, within one month after the receipt of a copy of the order. The petitioner herein vide its representation, dated 02-11-2001 sought for modification of the stay order and accordingly, prayed for providing an opportunity of personal hearing prior to disposal of the modification application. It is unnecessary to notice further details in this regard since the learned Standing Counsel for the Central Government, upon instructions from the respondents, states that the application is yet to be disposed of by the Commissioner of Customs and Central Excise (Appeals), Visakhapatnam. That application, now, is required to be disposed of by the Commissioner of Customs and Central Excise (Appeals), Visakhapatnam. We are told that the incumbent Commissioner of Customs and Central Excise (Appeals), Visakhapatnam, is on leave.

Notwithstanding the strenuous submissions made by the learned Senior Counsel Mr.Habeebullah Basha, appearing on behalf of the petitioner, we are not inclined to interfere with the order dated 21-08-2001, whereunder, the petitioner is required to pre-deposit a sum of Rs.39,25,000/-. Such discretionary orders are not interfered with by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. However, the application filed by the petitioner dated 02-11-2001 seeking modification of the stay order dated 21-08-2001 is required to be considered by the Commissioner of Customs and Central Excise (Appeals), Visakhapatnam in accordance with law, uninfluenced by the observations, if any, made in this order.

The fourth respondent vide proceedings dated 23-11-2004 attached 1913.777 Kl @ NAT of Furnace Oil in Tank No.290 and estimated the value at Rs.2.21 Crores. The petitioner is aggrieved by the same.

Having regard to the facts and circumstances and more particularly, having regard to the fact that the petitioner is a public sector undertaking, we consider it appropriate to direct the fourth respondent herein to forthwith raise the attachment, however, subject to the condition of petitioner depositing Rs.39,25,000/- (Rupees Thirty nine Lakhs Twenty Five thousands only), within a period of two weeks from today, failing of which, the same shall automatically result in revival of the attachment. The amount shall be deposited with the third respondent herein to the credit of the appeal and the amount deposited shall lie with the third respondent subject to further orders to be passed by the Commissioner of Customs and Central Excise (Appeals), Visakhapatnam. It is needless to observe that in case, if the order dated 21-08-2001 is modified, the third respondent shall have to return the deposited amount in terms of the order of modification, if any, to be passed by the Commissioner of Customs and Central Excise (Appeals), Visakhapatnam.

The Commissioner of Customs and Central Excise (Appeals), Visakhapatnam, is directed to dispose of the application dated
02-11-2001 filed by the petitioner herein seeking modification of the stay order after providing an opportunity of personal hearing to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order.

The writ petition is accordingly disposed of. There shall be no order as to costs.

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B.SUDERSHAN REDDY, J

DATE: 2nd November, 2004

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T.CH.SURYA RAO, J

Note: furnish copy by today.

B/o

Kvni/gj

To

1 The Secretary,Union of India, Ministry of Finance,
Department of Revenue, Central Secretariat, New Delhi.
2 The Commissioner of Customs and Central Excise (Appeals), CLS Building (Annexe) 2nd Floor, Nampally Station Road, Hyderabad - 500 001.
3 The Commissioner of Customs and Central Excise, Vishakapatnam-I Division,Ground Floor, SVC Complex, Door No. 47-11-7, Dwaraka Nagar,
Vishakapatnam - 530 016.
4 The Assistant Commissioner of Customs and Central Excise,

Vishakapatnam-I Division, Ground Floor, SVC Complex, Door No. 47-11-7, Dwaraka Nagar, Vishakapatnam - 530 016.

5 Two CD copies.